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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

<p>RILEY MITCHELL, Plaintiff, V. URBAN STRATEGIES, INC., URBAN STRATEGIES MANAGEMENT CORP., GWENETH MUNROE, US BROWNSVILLE III HOUSING DEVELOPMENT FUND CORPORATION and LOCAL 108, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, UFCW, AFL-CIO, CLC, Defendants.</p>	<p>CIVIL ACTION Case No.: 20-cv-893-AMD-RLM ANSWER TO AMENDED COMPLAINT WITH AFFIRMATIVE DEFENSES ON BEHALF OF LOCAL 108, RWDSU</p>
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Defendant Local 108, Retail, Wholesale and Department Store Union, UFCW, AFL-CIO, CLC (“Local 108”), with its principal offices at 1576 Springfield Avenue, Maplewood, New Jersey, 07040, by way of Answer to the Amended Complaint filed by Plaintiff Riley Mitchell, hereby responds as follows:

I. NATURE OF THE ACTION

1. Admitted in part. Denied in part. While it is admitted that the plaintiff has pursued an action against Local 108 and other entities and individuals alleging a violation of the

Collective Bargaining Agreement and breach of duty of fair representation, Local 108 denies that plaintiff is entitled to any relief or recovery based on his allegations against Local 108.

2. Admitted in part. Denied in part. While it is admitted that the plaintiff has pursued an action against Local 108 and other entities and individuals alleging a violation of the Collective Bargaining Agreement and breach of duty of fair representation, Local 108 denies that plaintiff is entitled to any relief or recovery based on his allegations against Local 108.
3. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
4. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
5. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
6. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.

II. JURISDICTION AND VENUE

7. Local 108 admits the allegations of paragraph 7 of the Amended Complaint.
8. Local 108 admits the allegations of paragraph 8 of the Amended Complaint.
9. Admitted in part. Denied in part. Local 108 admits that it does business within the Eastern District of New York and venue is proper in this District. Local 108 is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in this paragraph and therefore denies same.

III. SATISFACTION OF PROCEDURAL PREREQUISITES FOR SUIT

10. Local 108 denies the allegations contained in paragraph 10 of the Amended Complaint.
11. Local 108 denies the allegations contained in paragraph 11 of the Amended Complaint.
12. Local 108 denies the allegations contained in paragraph 12 of the Amended Complaint.
13. Local 108 denies the allegations contained in paragraph 13 of the Amended Complaint.
14. This paragraph does not contain an allegation against Local 108, but merely states legal conclusions, and therefore no response is required. To the extent a response is required, Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and therefore denies same.

IV. THE PARTIES

15. Local 108 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Amended Complaint.
16. Local 108 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Amended Complaint.
17. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
18. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
19. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
20. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.

21. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
22. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
23. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
24. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
25. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
26. Local 108 admits the allegations contained in paragraph 26 of the Amended Complaint.
27. Local 108 admits the allegations contained in paragraph 27 of the Amended Complaint.

V. **FACTUAL ALLEGATIONS**

28. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
29. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
30. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
31. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
32. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient

knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.

33. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.
34. Local 108 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34 of the Amended Complaint.
35. Local 108 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35 of the Amended Complaint.
36. Local 108 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36 of the Amended Complaint.
37. Local 108 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37 of the Amended Complaint.
38. Local 108 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38 of the Amended Complaint.
39. Local 108 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39 of the Amended Complaint.
40. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.

41. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.
42. Local 108 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42 of the Amended Complaint.
43. Local 108 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 of the Amended Complaint.
44. Local 108 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44 of the Amended Complaint.
45. Local 108 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45 of the Amended Complaint.
46. Local 108 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46 of the Amended Complaint.
47. Local 108 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47 of the Amended Complaint.
48. Local 108 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48 of the Amended Complaint.
49. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.

50. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.

51. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.

52. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.

53. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.

54. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.

55. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient

knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.

56. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.
57. Local 108 admits that Plaintiff contacted Shop Steward Frank Rodriguez. All other allegations contained in paragraph 57 are denied.
58. Local 108 states that the CBA speaks for itself. The remainder of this paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.
59. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.
60. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.
61. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient

knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.

62. Local 108 admits that a meeting occurred on or about November 19, 2019 that was attended by Local 108 President Charles N. Hall, Jr. and Local 108 Shop Steward Frank Rodriguez. Local 108 is without sufficient knowledge or information to form a belief as to the truth of the remainder of the allegations contained in this paragraph and leaves plaintiff to his proofs.
63. Local 108 admits that a meeting occurred on or about November 19, 2019, but is without sufficient knowledge or information to form a belief as to the truth of the remainder of the allegations contained in this paragraph and leaves plaintiff to his proofs.
64. Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and leaves plaintiff to his proofs.
65. Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and leaves plaintiff to his proofs.
66. Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and leaves plaintiff to his proofs.
67. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.
68. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto. To the extent a response is required, Local 108 is without sufficient

knowledge or information to form a belief as to the truth of the allegations contained in this paragraph.

69. Local 108 denies the allegations in paragraph 69 of the Amended Complaint.

70. Local 108 denies the allegations in paragraph 70 of the Amended Complaint.

71. Local 108 denies the allegations in paragraph 71 of the Amended Complaint.

72. Local 108 denies the allegations in paragraph 72 of the Amended Complaint.

FIRST CAUSE OF ACTION AGAINST URBAN

73. Local 108 incorporates by reference each of its responses to the allegations of the Amended Complaint in the preceding paragraphs.

74. This paragraph and cause of action refers to and identifies parties other than Local 108 and hence no response is made thereto. Further, the CBA speaks for itself.

75. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.

76. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.

SECOND CAUSE OF ACTION AGAINST THE UNION

77. Local 108 incorporates by reference each of its responses to the allegations of the Amended Complaint in the preceding paragraphs.

78. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Local 108 admits the allegation contained in paragraph 78 of the Complaint.

79. Local 108 denies the allegations contained in paragraph 79 of the Amended Complaint.

80. Local 108 denies the allegations contained in paragraph 80 of the Amended Complaint.

THIRD CAUSE OF ACTION AGAINST URBAN, MUNROE AND US BROWNSVILLE

81. Local 108 incorporates by reference each of its responses to the allegations of the Amended Complaint in the preceding paragraphs.
82. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
83. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
84. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.

FOURTH CAUSE OF ACTION AGAINST URBAN AND MUNROE

85. Local 108 incorporates by reference each of its responses to the allegations of the Amended Complaint in the preceding paragraphs.
86. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
87. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.
88. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.

FIFTH CAUSE OF ACTION AGAINST URBAN, MUNROE AND US BROWNSVILLE

89. Local 108 incorporates by reference each of its responses to the allegations of the Amended Complaint in the preceding paragraphs.
90. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.

91. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.

92. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.

SIXTH CAUSE OF ACTION AGAINST URBAN AND MUNROE

93. Local 108 incorporates by reference each of its responses to the allegations of the Amended Complaint in the preceding paragraphs.

94. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.

95. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.

96. This paragraph refers to and identifies parties other than Local 108 and hence no response is made thereto.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Amended Complaint fails to state a claim against Local 108 upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Local 108 did not act arbitrarily, capriciously, or in bad faith in its representation of Plaintiff.

THIRD AFFIRMATIVE DEFENSE

At all times, Local 108 satisfied its duty of fair representation towards Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff failed to exhaust all administrative and/or contractual remedies under the collective bargaining agreement.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's termination was caused in whole or part by the culpable conduct attributed to plaintiff, including but not limited to failing to abide by the employer's policies, procedures, or directives, and the collective bargaining agreement.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate his damages.

SEVENTH AFFIRMATIVE DEFENSE

No action or inaction by Local 108 was the proximate cause of any injury to Plaintiff under the collective bargaining agreement or applicable law.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

Local 108 did not breach any duty owed to Plaintiff.

TENTH AFFIRMATIVE DEFENSE

Plaintiff cannot recover punitive damages against Local 108 based on a cause of action alleging a breach of the duty of fair representation as a matter of law.

PRAYER FOR RELIEF

WHEREFORE, Local 108 respectfully requests the following relief:

- (a) Judgment in Local 108's favor dismissing all claims against it in the Amended Complaint with prejudice and denying each and every prayer for relief contained therein;
- (b) Reasonable attorney's fees and costs; and
- (c) Such other and further relief as the Court deems just in the circumstances.

OXFELD COHEN, P.C.
Attorneys for Defendant Local 108, RWDSU

By: /s/ William P. Hannan
William P. Hannan, Esq.

Dated: June 24, 2020

CERTIFICATE OF SERVICE

This is to certify that a copy of this Answer to Plaintiff's Amended Complaint was filed this 24th day of June 2020 electronically via the Court's CM-ECF system, which will serve a copy on all other counsel of record.

/s/ William P. Hannan

William P. Hannan